Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 03 of 2004

The Oriental Insurance Company Ltd.,
through its Divisional Manager,
Astlay Hall, Dehradun, District-Dehradun.

..... Appellant .

Versus

1. Smt. Vimla Devi wife of late Soban Singh
2. Km. Bani D/o late Soban Singh,
3. Man Singh S/o late Soban Singh,
4. Pavan Singh S/o late Soban Singh
5. Bhopal Singh S/o late Soban Singh,
6. Rakesh Singh S/o late Soban Singh,
7. Km. Amita D/o late Soban Singh,
8. Km. Sunita D/o late Soban Singh,
   All residents of Village-Kansued, Patti-Gosain,
   P.O. Bagiyal, District-Tehri Garhwal.

.....Claimants/Respondents

9. Mahipal Singh S/o Veer Singh,
   R/o Dasjula, Patti-Daunda Kabali,
   District-Tehri Garhwal.

..... Respondent.

(2) A.O. No. 01 of 2004

The Oriental Insurance Company Ltd.,
through its Divisional Manager,
Astlay Hall, Dehradun, District-Dehradun.

..... Appellant.

Versus

1. Smt. Sobani Devi wife of late Uttam Singh
2. Km. Saikeena,
3. Km. Bardai,
4. Km. Hardai,
5. Dayal Singh
6. Km. Meena,
7. Ummed Singh,
8. Ram Singh,
   all daughters and sons of late Sri Uttam Singh,
   Residents of Chaudu Kakhil, Patti Darjula,
   District-Tehri Garhwal.
9. Mahipal Singh S/o Veer Singh,
   R/o Village-Daunda Ke Beli, Patti-Dasjula,
   District-Tehri Garhwal.

..... Respondent.

AND

(3) A.O. No. 462 of 2003

The Oriental Insurance Company Ltd.,
through its Divisional Manager,
Astlay Hall, Dehradun, District-Dehradun.
..... Appellant.

Versus

1. Sobat Singh S/o Sri Ratan Singh
   Resident of Kansued, Patti-Gosain,
   District-Tehri Garhwal,

2. Mahipal Singh S/o Beer Singh,
   R/o Village-Daunda Ke Beli, Patti-Dasjula,
   District-Tehri Garhwal.
..... Respondents.

.....

Sri D.S. Patni, learned counsel for the appellant,
Sri N.S. Pundir, learned counsel for the claimants/respondents.

Date: 31st Aug., 2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

These appeals have been filed by the Oriental Insurance Company against one and common judgment and award dated 10.10.2003 passed by Motor Accident Claims Tribunal/ District Judge, Tehri Garhwal in Motor Accident Claim Case Nos. 43 of 2000, 33 of 2000 and 32 of 2000 respectively. Since, all these appeals are against one and same judgment and the facts are common, they are being decided by this common judgment.

2- Brief facts giving rise to all these appeals are that on 13.04.2000 at about 5:15 P.M. at Chamba-Mussoorrie Road about 4 Kms. Towards Mussoorrie from Buranshkhandi, due to rash and negligent driving of the driver of vehicle Jeep No. UP.07-F-4845. The vehicle fell into a ditch resulting that travelling passengers of the said vehicle sustained injuries and Sohan Singh aged about 35

years, Uttam Singh aged about 40 years and Rakesh Singh aged about 12 years respectively died. The dependents of the deceased persons in all the three claim petitions filed separate claim petition for compensation.

3- The Opposite Parties contested the claim petitions by filing their separate written statements in each claim petition. The owner of the offending vehicle in each claim petition admitted the accident in his written statement. He alleged that the accident in question took place due to the mechanical failure in the vehicle and there was no rash and negligent driving on the part of the owner-cum-driver and, if any, liabilities are made out, that shall be borne out by the Opp. Party No.2- the Oriental Insurance Company with whom the offending vehicle was insured at the time of alleged accident. The Oriental Insurance Company in its written statement filed in each claim petition denied the allegations of the claim petitions. It was further alleged that the offending vehicle was being driven in violation of the terms and conditions of the policy and the driver of the offending vehicle was not having a valid driving licence at the time of the accident as well as the offending vehicle was carrying three passengers more than its capacity. Hence, the Opp. Party-Insurance Company is not liable to pay any compensation.

4- The learned Tribunal, on the pleadings of the parties in each claim petition framed the following issues:-

1. *Whether the accident took place on 13.04.2000 at about 5:15 P.M. near Burashkhandi at Chamba-Mussoorrie motor road due to rash and negligent driving of the offending vehicle – Jeep Commander NO.UP.07-F-4845 by its driver? Its effect?*

2. *Whether the offending vehicle No.UP.07-F.4845 was insured with the Opp. Party No.2- Oriental Insurance Company, at the time of the accident? If so, its effect?*

3. *Whether the driver of the offending vehicle U.P.07.F-4845 was not holding a valid driving licence at the time of the accident? If so, its effect?*

4. *Whether the Opp. Party No.2, Oriental Insurance Company is exempted from paying the whole amount of compensation on behalf of Opp. Party No.1, due to overloading of the offending vehicle? If so, its effect?*

5. *To what amount of compensation are the petitioners entitled and from which of the Opp. Parties?*

5- The tribunal decided all the issues in favour of the claimants and allowed the claim petitions for Rs.6,05,000/- as compensation in Motor Accident Claims Case No. 43 of 2000, Rs.5,45,000/- in Motor Accident Claims Case No. 33 of 2000 and Rs.1,50,000/- in Motor Accident Claims Case No. 32 of 2000 alongwith interest at the rate of 6% per annum from the date of filing of each claim petition till the date of payment against Opp. Party – Oriental India Insurance Company. Feeling aggrieved against the aforesaid impugned judgment and order-dated 10.10.2003, the Oriental India Insurance Company has come up in separate appeals.

6- The learned counsel for the insurance company challenged the impugned judgment in all these appeals on the grounds, inter alia, that all the deceased were travelling in a goods commercial vehicle without ticket and as such they were gratuitous passengers. That the offending vehicle was overloaded at the time of the accident and the tribunal has misconstrued and misread regarding three passengers mentioned in the policy.

7- We have heard the learned counsel for the parties and have gone through the material on record. The learned tribunal in its finding on Issue No. 1 held that the accident took place due to the rash and negligent driving of the driver of the vehicle U.P.07-F-4845. This finding of the tribunal is based on the evidence of witness Pusha Lal, who was also travelling in the offending vehicle. He stated on oath that the accident in question took place due to rash and negligent driving of the driver of the offending vehicle. The insurance company did not adduce any evidence, which could prove that the accident took place due to mechanical failure in the vehicle. No mechanical examination report was filed. Further, the driver-cum-owner of the offending vehicle admitted that in the alleged accident, Soban Singh, Uttam Singh and Rakesh Singh died. We are of the opinion that the tribunal rightly held that the accident took place due to rash and negligent driving of the offending vehicle by its driver.

8- The tribunal in its finding, on Issue No.2 held that the offending vehicle was insured with Opp. Party Oriental Insurance Company on the basis of insurance paper. In the said paper, the validity period appears to be from 05.07.1999 to 04.07.2000. The accident in question occurred on 13.04.2000 well within the validity period of the insurance. Hence, the tribunal committed no error in holding that the offending vehicle was insured with the Oriental Insurance Company at the time of the accident. While dealing with Issue No.3, the tribunal rightly held that the driver was holding the valid driving licence at the time of the accident. The driving licence was also filed before the Tribunal, which shows that it was valid from 10.09.1997 to 09.09.2000. The finding on this issue does not require any interference.

9- The finding recorded on Issue No.4 by the Tribunal is that after perusal of the insurance paper, it is evident that the offending vehicle was insured for goods as well as for passengers and for that the owner of the offending vehicle has paid extra amount of premium. The licensed carrying capacity of the offending vehicle has been shown for goods 227 Kgs. and for passengers 1+3. Thus, from the policy, it is evident that the offending vehicle was insured for goods as well as for the 1+3 passengers. Thus, as per the policy, three passengers were allowed. The tribunal rightly held that the insurance company will be liable for payment of compensation.

10- It was further contended by the learned counsel for the opposite party No.2- Oriental Insurance Company that the insurance company cannot be held liable for payment of compensation due to overloading of the offending vehicle. The learned tribunal while deciding Issue No.4 has elaborately discussed the points and on the basis of the terms in the insurance policy, reached on the conclusion that the owner was paying extra amount of premium for goods 227 Kgs. and for 1+3 passengers and rightly held that the deceased persons cannot be said to be gratuitous passengers. The burden to prove this point in all the three claim petitions lies on the Oriental Insurance Company, which the Oriental Insurance Company failed to prove. In view of this clear-cut finding of the Tribunal, it does not lie in the mouth of the appellant to reiterate the matter before this Court. The tribunal on the basis of the evidence and dependency rightly calculated the amount of compensation. Nothing wrong is found in the judgment of the learned tribunal, which warrants interference in the cases under appeals. All these appeals fail on merit.

11- All these appeals are dismissed. The impugned judgment and award is upheld. The amount of compensation, if deposited in the appeals, shall be remitted to the concerned Motor Accident Claims Tribunal.

(B.S. Verma, J.) **(P.C. Verma, J.)**

31.08.2004
P.Singh